

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Falla, et al.)
Patent No.: 7,690,965)
Application No.: 10/611,682) Art Unit: 3765
Date of Patent: April 6, 2010) Examiner: Gloria M. Hale
For: METHODS OF MAKING COTTON)
BLEND GLUE BRASSIERES)

PETITION UNDER 37 CFR §1.182

Mail Stop: Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.182, the Patent Owner, HBI Branded Apparel Enterprises, LLC., (hereinafter, “Patent Owner”), hereby petitions the Director to withdraw a terminal disclaimer filed with respect to application Serial No. 10/611,682, now U.S. Patent No. 7,690,965, citing an incorrect patent number, and replace it with a corrected terminal disclaimer citing the correct patent number. As described herein, U.S. Patent No. 5,154,659 was incorrectly referenced, apparently in error, in the terminal disclaimer. The correct reference is U.S. Patent No. 6,837,771.

In an Office Action mailed February 10, 2005, at page 6, the Examiner states:

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,837,771 in view of Gluckin (US 5,154,659). The present claims are an obvious modification of the previous patent claims in that the present inventive material method is the same material laminate method and material with the obvious modification of a cotton based material within the laminate as disclosed by Gluckin. (emphasis added)

On April 15, 2005, Applicants submitted a terminal disclaimer as part of the Response to the February 10, 2005 Office Action. Specifically, the terminal disclaimer disclaims:

...the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 5,154,659. (emphasis added)

Whereas the terminal disclaimer should have cited U.S. Patent No. 6,837,771, assigned to Patent Owner, Applicants erroneously cited U.S. Patent No. 5,154,659 to Gluckin, which is not owned by Patent Owner. U.S. Patent No. 5,154,659 was cited by the Examiner, in combination with U.S. Patent 6,837,771, only to form the basis for an obviousness-type double patenting rejection. This error is clear from the record.

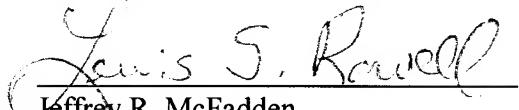
Based upon the error, U.S. Patent No. 7,690,965 would wrongly expire on December 14, 2010, rather than on August 1, 2022, had the terminal disclaimer filed on April 15, 2005 correctly disclaimed U.S. Patent No. 6,837,771.

Accordingly, Patent Owner seeks relief under 37 C.F.R. §1.182 by respectfully requesting removal of the incorrect terminal disclaimer filed on April 15, 2005, and replacing it with the attached corrected terminal disclaimer.

The Director is hereby authorized to charge Deposit Account No 09-0528 in the amount of \$400 in accordance with 37 C.F.R. §§ 1.182 and 1.17(f). If any other fees are due, please charge such fees occasioned by this Petition to Deposit Account No. 09-0528.

Date: December 10, 2010

Respectfully submitted,



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Atty. Docket No.: H479869 1671.1

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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENTDocket Number (Optional)
H47969 1671.1

In re Application of: Gloria Falla and Roger Warren

Application No.: 10/611,682

Filed: July 1, 2003

For: METHODS OF MAKING COTTON BLEND GLUE BRASSIERES

The owner*, HBI Branded Apparel Enterprises, LLC, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,837,771 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

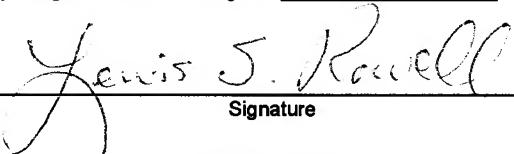
- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 45,469


 Signature _____ Date _____
 Lewis S. Rowell
 Typed or printed name _____

336-574-8090
 Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
 Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.